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by deleting the definition of "environmental audit" in Section 2 and by substituting instead the following:

() "Environmental audit" means a voluntary, comprehensive evaluation or review of one or more facilities, or an activity at one or more facilities to identify technical and/or legal issues relative to environmental compliance or permitting status and strategies, regulated by the Tennessee environmental laws or permits, local government ordinances, or the federal, regional or local counterpart or extension of such laws, or of compliance programs or management systems related to such facility or activity. An environmental audit may be conducted by the owner or operator, by the owner's or operator's officers, agents or employees, or by independent contractors. Such audit shall be a planned, scheduled event and shall be evidenced by written documentation. Once initiated, the environmental audit shall be completed within a reasonable period of time as determined under the facts and circumstances of the situation. Nothing in this section shall be construed to authorize continuous, uninterrupted environmental audits engaged in solely for the purpose of evading the requirements of this act.

and is further amended by deleting the definition of "environmental audit report" in Section 2 and by substituting instead the following:

() "Environmental audit report" means any document or documents or any excerpt thereof, existing either individually or as a compilation, prepared in connection with an environmental audit and labeled "environmental audit report" or equivalent

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language. An environmental audit report may include, but is not limited to, field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically-recorded information, implementation plans identifying issues and strategies for corrective action, maps, charts, graphs and surveys, provided such supporting information is prepared or developed in the course of an environmental audit. The following shall not be considered to be an environmental audit report for the purposes of this act:

(1) Documents, communications, data, reports or other information required to be collected, developed, maintained, reported or otherwise made available to a regulatory agency pursuant to Tennessee environmental laws, permits or other federal, state or local law, ordinance, regulation, or order;

(2) Information or documents that are otherwise required to be made available by law or which are required for regulatory activity conducted by the Department of Environment and Conservation or by an agency or political subdivision having a responsibility to administer or to enforce Tennessee environmental laws and which are not prepared solely for an environmental audit. Nothing in this act shall limit or restrict in any way documentation and reporting that are otherwise required pursuant to Tennessee environmental laws or which are required for regulatory activity conducted by the Department of Environment

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and Conservation or by an agency or political subdivision having a responsibility to administer or to enforce Tennessee environmental laws.

(3) Information obtained solely by observation, sampling or monitoring by any regulatory agency; and

(4) Information obtained from a source independent of the environmental audit.

and is further amended by deleting the words and punctuation", collectively, all the provisions of" in the definition of "Tennessee criminal environmental laws" in Section 2 and by adding the words and punctuation ", local government ordinances, following the words, numbers and punctuation "Tennessee Code Annotated § 62-21-101, et seq., in the definition of "Tennessee criminal environmental laws" in Section 2.

and is further amended by deleting Section 3 in its entirety and by substituting instead the following new Section 3:

SECTION 3. An environmental audit report or any information contained therein shall be privileged provided the report or information contained therein is labeled "environmental audit report" or equivalent language and shall be immune from discovery and shall not be admissible as evidence or otherwise in any legal action in any civil, criminal or administrative proceeding, except as provided in Sections 4, 5 and 7 of this act. The privilege provided in this act shall be effective to prevent discovery of or to prevent use as evidence, any environmental audit report or information contained therein

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by any person, legal entity, the State of Tennessee or any government entity created under Tennessee law. This privilege shall be incorporated into the law applicable to privilege in Tennessee.

and is further amended by deleting the words and punctuation", other than an employee of the owner or operator," in subsection (1) in Section 4(a),
and is further amended by deleting subsection (3) in Section 4(a) in its entirety and by substituting instead the following new subsection:

(3) The environmental audit report, or any part of it, is fraudulently used, procured or obtained by a person:

- (A) To avoid criminal prosecution, or
- (B) To contest, defend or avoid criminal or civil liability, or
- (C) To mitigate criminal sentencing and penalties.

Fraudulent use shall included, but shall not be limited to, activity where a person confirms an environmental compliance violation and subsequently conducts an environmental audit to avoid criminal or civil sanctions resulting from that environmental compliance violation.

and is further amended by adding the words "or activity" after the words "of a facility" in Section 4, subsection (a),
and is further amended by deleting the words and punctuation "disclosure of the environmental audit report was sought after the effective date of this act, and:" in Section 5, subsection (a),

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and is further amended by adding the words "or activity" following the words "of the facility" in Section 5, subsection (a)(2)(B),

and is further amended by adding the words "or activity" following the words "of the facility" in Section 5, subsection (a)(2)(C),

and is further amended by adding the words, number and punctuation "as outlined in Section 4 (a) (3) of this act" after the word "purpose" in Section 5, subsection (a)(1),

and is further amended by adding the following new subsection (2) in Section 5, subsection (a) and by renumbering the remaining subsections accordingly:

(2) The information contained in the environmental audit report demonstrates a clear, present, and impending danger to the public health or the environment in areas outside the facility property.

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and is further amended by adding the following new subsection (2) in Section 5, subsection (b) and by renumbering the remaining subsections accordingly:

(2) The information contained in the environmental audit report demonstrates a clear, present, and impending danger to the public health or the environment in areas outside the facility property.

and is further amended by adding the words "or sources" following the word "source" in the first sentence of Section 5, subsection (c),

and is further amended by deleting the second sentence in subsection (g) of Section 5 and by substituting instead the following sentence:

No portion of an environmental audit or environmental audit report shall be introduced following a determination by a court that such environmental audit report shall remain privileged.

and is further amended by deleting subsection (j) in Section 5 in its entirety and by substituting instead the following new subsection:

(j) If any party to a civil, criminal or administrative proceeding for which an in-camera review or hearing proceeding described in this act is conducted divulges or disseminates all or any part of the information contained in an environmental audit report, for which disclosures has not been compelled by a court of record pursuant to the provisions of this act, such party shall be subject to such remedies available to an aggrieved party under common law, including but not limited to, civil contempt.

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and is further amended by deleting the words and punctuation "participating in," in the first sentence of Section 6

and is further amended by deleting Section 7 in its entirety and by substituting instead the following new Section 7:

SECTION 7.

(a) If any owner, operator or its agent makes a voluntary written disclosure arising out of an environmental audit of an environmental compliance violation to the Tennessee Department of Environmental and Conservation or to an agency or political subdivision having a responsibility to administer or enforce the Tennessee environmental laws, then there is a rebuttable presumption that the disclosure is voluntary, and the person, persons and/or entity shall be immune from any state or local administrative and civil penalties associated with the issues disclosed and shall be immune from any state or local criminal penalties for unintentional violations associated with the issues disclosed unless said presumption is rebutted as provided in subsection (b) of this section.

(b) To rebut the presumption that a disclosure is voluntary, the governmental agency or political subdivision having a responsibility to administer or to enforce the Tennessee environmental laws regarding any information related to the compliance status of any of the owner or operator's facilities under Tennessee laws or permits or under the federal, regional or local counterpart or

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extension of such laws shall show to the satisfaction of an administrative tribunal or court of record presiding over the enforcement action that any of the following conditions exist:

(1) The disclosure was made in response to a final order issued to the owner or operator by the Tennessee Department of Environment and Conservation, or other appropriate state, federal or local governmental agency or political subdivision; or

(2) The disclosure did not arise out of an environmental audit;
or

(3) A written disclosure was not made within thirty (30) days after knowledge of the information disclosed is obtained and promptly verified by the owner or operator; or

(4) The person or entity making the disclosure did not initiate the appropriate effort to achieve compliance, did not pursue compliance with reasonable diligence, or did not correct the noncompliance. Where such evidence shows the noncompliance was a failure to obtain a permit, appropriate efforts to correct the noncompliance include the submittal of a complete permit application within a reasonable time; or

(5) The person or entity making the disclosure has not cooperated with the Tennessee Department of Environment and

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Conservation, or other state, or local governmental agency or political subdivision, regarding investigation of the issues identified in the disclosure.

(c) A decision by an administrative tribunal regarding the voluntary nature of the disclosure is final agency action. No state or governmental agency or political subdivision may include any administrative or civil penalty or fine or any criminal penalty or fine for acts in a notice of violation or in a cease and desist order based on any environmental compliance violation immune from penalties under this section, absent a finding by the administrative tribunal or court of record that the state or local governmental agency or political subdivision has rebutted the presumption of voluntariness of the disclosure. The burden to rebut the presumption of voluntariness is on the state or local governmental agency or political subdivision.

and is further amended by inserting the words and punctuation "recognized in Tennessee." after the words "common law privilege" in Section 9 and by deleting the remainder of the sentence, and is further amended by adding the following new Section 11 and by renumbering the subsequent sections accordingly:

SECTION 11. Nothing in this act shall be construed to abrogate the responsibility of any person or entity to comply with federal, state or local government reporting

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requirements of notification of any situation or event which represents a substantial risk
or injury to health or the environment.